

DIVISION OF POLICE

Department of Safety

City of Cincinnati

NOTIFICATION OF RIGHTS

Place 3229 Burnet AveDate 1/2/97Time 1447 hrs

YOUR RIGHTS

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Witness Harry C. FairleySIGNED Sharon RichmondWitness P. C. W. ZanderbergTime 2:45 p.m. 1450 hrs

WAIVER (LINE UP)

I understand that I am entitled to the presence and aid of legal counsel during all of the critical stages of my prosecution. I further understand that the police line up for identification purposes is a critical stage of my prosecution. I understand and acknowledge that I am entitled to the presence and aid of legal counsel during a police line up for identification purposes and I hereby waive my right to have the presence and aid of legal counsel during said police line up.

Witness _____

SIGNED _____

tness _____

Time _____

P. EXHIBIT G

DIVISION OF POLICE

Department of Safety

City of Cincinnati

NOTIFICATION OF RIGHTS

Place 824 Broadway St.Date 11/2/97Time 1915

YOUR RIGHTS

Before we ask you any questions, you must understand your rights.

YES

You have the right to remain silent.

YES

Anything you say can be used against you in court.

YES

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

YES

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

YES.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

YES.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Witness Det. Heinen 297

SIGNED

Sharon D. RichmondWitness P.O. Gundersen 378

Time

WAIVER (LINE UP)

I understand that I am entitled to the presence and aid of legal counsel during all of the critical stages of my prosecution. I further understand that the police line up for identification purposes is a critical stage of my prosecution. I understand and acknowledge that I am entitled to the presence and aid of legal counsel during a police line up for identification purposes and I hereby waive my right to have the presence and aid of legal counsel during said police line up.

Witness _____

SIGNED _____

Witness _____

Time _____

DIVISION OF POLICE

Department of Safety

City of Cincinnati

NOTIFICATION OF RIGHTS

Place 824 Broadway st.Date 1/2/97Time 2127

YOUR RIGHTS

Before we ask you any questions, you must understand your rights. YESYou have the right to remain silent. YESAnything you say can be used against you in court. YESYou have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. YESIf you cannot afford a lawyer, one will be appointed for you before any questioning if you wish. YESIf you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer. YES

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Witness P. J. Heinlein 297

SIGNED

Sharon L. RichmondWitness P. J. Henderson 378

Time

WAIVER (LINE UP)

I understand that I am entitled to the presence and aid of legal counsel during all of the critical stages of my prosecution. I further understand that the police line up for identification purposes is a critical stage of my prosecution. I understand and acknowledge that I am entitled to the presence and aid of legal counsel during a police line up for identification purposes and I hereby waive my right to have the presence and aid of legal counsel during said police line up.

Witness

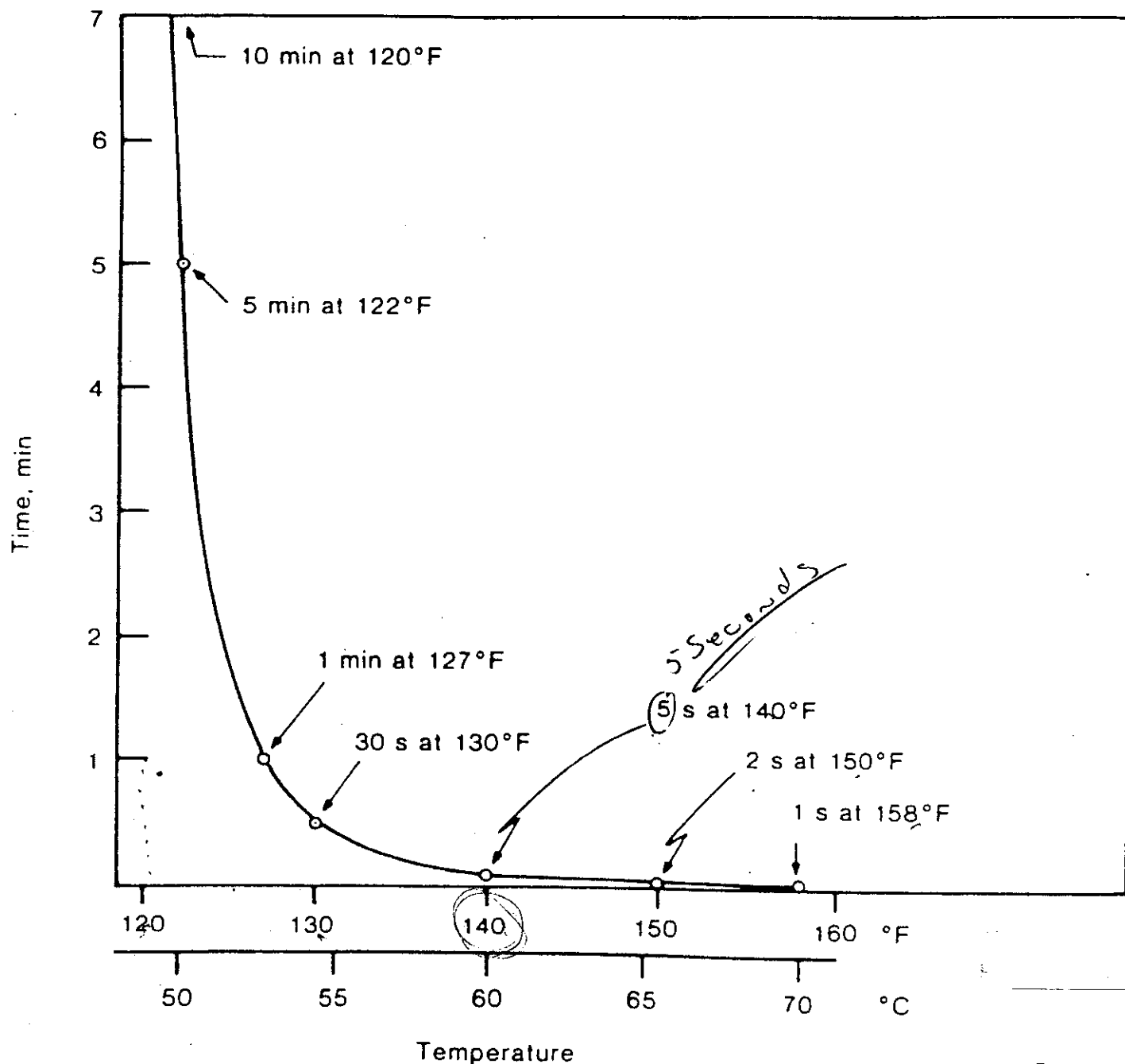
SIGNED

Witness

Time

Table 1.—Age Distribution of Inpatient Tap Water Scald Burns (N=33)

Age Range	Range	Mean	SD	Median
Infants, mo (n=7)	8-12	11.1	1.46	12
"Toddlers," mo (n=10)	14-36	20.8	7.14	18
Children, yr (n=3)	6-12	8.33	3.21	7
Adults, yr (n=10)	18-63	39.9	14.9	38.5
"Elderly," yr (n=3)	74-84	79.3	5.03	80



P. EXHIBIT H

Duration of exposure to hot water to cause full-thickness epidermal burns of adult various water temperatures (adapted from Mortiz and Henriques).

To the Police Chief of Cincinnati, Ohio, Greetings: Whereas there has been filed with me an affidavit, a copy of which is attached hereto and incorporated herein, these are therefore, to command you in the name of the State of Ohio with the necessary and proper assistance, to enter, in the day time, into the :

2869 St. Catherine Place, 1st floor apartment, of a three family building. The residence is further described as a 2 story grey frame building. The 1st floor apartment is on the left as you face the building and has a red front and storm door.

in the county aforesaid, and there diligently search for the contraband to wit;

Any and all clothing that Matthew Richmond might have on his person before the injuries where received and all clothing, sheets and blankets that he might have been wrapped in after he was taken from the bathroom. Any medications that the child may have been treated with.

and that you bring said items and any person(s) found to be in control of or possession of such items forthwith before me, or some other judge or magistrate of the county having cognizance thereof, to be disposed of and dealt with according to law.

Given under my hand this 3rd day of

Jan 1997 1998, at 2:35 pm o'clock.

D. J. [Signature]
Judge, Hamilton County Municipal Court

=====

RETURN ON SEARCH WARRANT

=====

On the 3rd day of January, 1998, at 1555 o'clock.
I executed the search warrant attached hereto, and removed from

said premises in the presence of: Sharon Richmond

property of which the following is an inventory:

SEE ATTACHED SHEET(S)

I hereby certify that copies of the search warrant and inventory were: (delivered to/left at) _____.

Sworn to, subscribed before me, and filed in

this court this 7th day of Jan, 1998

by D. J. [Signature]
Judge, Hamilton County Municipal Court

P.O. Harry C. [Signature]

P. EXHIBIT I

Inventory of Search Warrant at 2869 St. Catharine Place on ¹⁰²1/3/97by officer Det. Harry Frisby / D. Landenberg

ITEM #	LOCATION	EVIDENCE	FOUND BY OFFICER
1	Living Room Couch	2 Shirts - White Blk Red 1 Shirt - Yellow w/ stripes	Frisby / Lawson
2	Living Room Couch	2 Wash cloths	Frisby / Lawson
3	Living Room Couch	1 Pillow Case	Frisby / Lawson
4	Living room Bed	1 Solid White Sheet	Frisby / Lawson
5	Bathroom	1-Pair Briefs	Frisby / Lawson
6	Bathroom	1-Pillow Case	Frisby / Lawson
7	Living room Entertainment Center	1-Box Novemas	Frisby / Lawson
8	Living room Entertainment Center In front of floor.	1-Pair Briefs	Frisby / Lawson
9	Kitchen	3x5 card w/ writing	Frisby / Lawson

1-7-97
10:00 pm

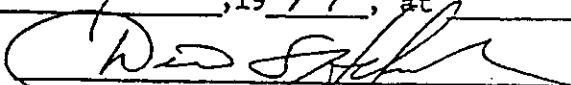
Dine

To the Police Chief of Cincinnati, Ohio, Greetings: Whereas there has been filed with me an affidavit, a copy of which is attached hereto and incorporated hereby, these are, therefore, to command you in the name of the State of Ohio, with the necessary and proper assistance, to enter, in the day time, into the 1997 JAN 14 A 10: 869 St. Catherine Pl, 1st floor apartment, of a three family building. The residence is further described as a 2 story grey frame building. The first floor apartment is on the left as you face the building and has a red front and storm door. The numbers 2869 appear on the outside of the building to the right of the front porch staircase. in the county aforesaid, and there diligently search for the goods, chattels, or articles to wit:

A hose connected to the water faucet in the bathtub, approximately 1/2" in diameter and approximately 5 foot in length, which was used to rinse Mathew Richmond off and fill the bathtub. Also to test the water temperature from the faucet through the above described hose and that you bring the same, or any part thereof, found on such search,

forthwith before me, or some other judge or magistrate of the county having cognizance thereof, to be disposed of and dealt with according to law.

Given under my hand this 8th day of January, 1997, at 10:10 A o'clock


Judge, Hamilton County Municipal Court

RETURN ON SEARCH WARRANT

On the 8th day of JANUARY, 1997, at 1245 o'clock P M., I execute the search warrant attached hereto, and removed from said premises in the presence of OFFICERS HEINLEN & LANDSBERG, property of which the following is an inventory:

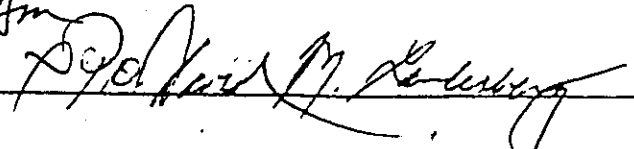
1/2" DIAMETER PLASTIC HOSE, 4'9" IN LENGTH - TAKEN FROM BATHTUB.
4 (4"X6" INDEX CARDS) WITH NOTES WRITTEN BY RICHARD KLEIN - (TAKEN FROM KITCHEN)
1 LETTER SIZE WHITE ENVELOPE (WITH NOTE WRITTEN BY RICHARD KLEIN) - (TAKEN FROM KITCHEN)

SEE ATTACHED INVENTORY SHEET

I hereby certify that copies of the search warrant and inventory were (delivered to/left a

Sworn to, subscribed before me, and filed in this
Court this Jan 14, 1997 at 9:40 AM

By 
Judge, Hamilton County Municipal Court



H

Sharon
I spoke with Jimmy
I still love you & will stand
by you for the rest of my life,
which won't be very much longer.
The police feel you are kind of a
you believe them. I know you
would. They are just.

1/8/77-297 Kitchen - Trash

11102 CONSULTATION CO.
3610 WITHEROW R.
HAMILTON, Ohio 45011

DIVISION OF POLICE 351-7874
726-4006

6-8 months
WORK

295-60-7484

2869 ST. CATHERINE PL.
Department of Safety 1ST FLOOR
45211

2-4341

NOTIFICATION OF RIGHTS

1213 COMPLETED
SCARLET OAKS
2 YRS. COLLEGE
OHIO UNIVERSITY
AS-DEGREE
City of Cincinnati
BUSINESS ADMIN.

7

Place 824 Broadway ST.
P.C.U.

Date 1/2/97

Time 11:53 PM

YOUR RIGHTS

Before we ask you any questions, you must understand your rights. YES

You have the right to remain silent. YES

Anything you say can be used against you in court. YES

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. YES

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish. YES

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer. YES

4/24 hours - BLUE
BUD KITE - 5-1202 CHAS
8:00 PM -
2 LONG WHEN POLICE ARRIVED
2315 H.
NO DRUGS
NO MEDICATION

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Witness Robert Heinlein

SIGNED [Signature]

Witness P.O. A. Funderburg 378

Time 11:57 PM

WAIVER (LINE UP)

I understand that I am entitled to the presence and aid of legal counsel during all of the critical stages of my prosecution. I further understand that the police line up for identification purposes is a critical stage of my prosecution. I understand and acknowledge that I am entitled to the presence and aid of legal counsel during a police line up for identification purposes and I hereby waive my right to have the presence and aid of legal counsel during said police line up.

Witness _____

SIGNED _____

Witness _____

Time _____

P. EXHIBIT J

1-2-97

2350 HRS.

11:50 PM

Assoc. IN BUSINESS ADVISED. From CHIC U.

AM

RECALL ADVISED

- ↳ MR. KLOEN STATES HE IS WILLING TO TALK.
- ↳ TOOK MATT TO BATH ROOM TO WASH POOP OFF.
- ↳ STARTED OUT W/ COY WATER MIXTURE OF WATER
- ↳ I SPENTED HER DOWN WITH WHAT I THOUGHT WAS COY MIXTURE OF WATER
- ↳ HER SKIN STARTED PRICKLE-OFF.
- ↳ I DIDN'T KNOW
- ↳ HAPPENED LAST NIGHT - DON'T KNOW WHAT TIME.
- ↳ 11 OR 12 O'CLOCK MAYBE 1 OR 2 AM.
- ↳ I WANTED IT TO BE AN UNCOMFORTABLE BATH.
- ↳ NO IDEA I WAS SPENDING HER W/ HOT WATER
- ↳ NEXT THING I KNEW HER SKIN WAS RED.
- ↳ DISAPPOINTED.
- ↳ MAKE MATT SIT ON THE CHAIR.
- ↳ MAKE MATT GO TO BED
- ↳ MAKE MATT TAKE COY BATH. TO TEACH HER
- ↳ GIVEN MATT 2 OR 3 BATHS
- ↳ MATT 7 SHOWED W/ RICK 2-3 WKS.
- ↳ DON'T WANT MATT TO BE HURT.
- ↳ TOOK MATT OUT → STARTED DRYING HER OFF
- ↳ REALIZED MATT WAS BURNING.
- ↳ LOOKING LIKE SHE WAS BURN.
- ↳ TREATING LIKE SHE WAS BURN W/ BUFF IN BLUE JAR + SOX
- ↳ WRAPPED MATT IN JAR + PT HER TO BED.

P. EXHIBIT K

- K-2
- ↳ MATT WOULD SAY "YUMMY" & SHARON GOT UP TO ~~ATT~~ GOING TO MATT / 3 or 4 TIMES DURING NIGHT).
 - ↳ Woke up around 0630.
 - ↳ MATT LOOKING ALRIGHT WHEN I LEFT FOR WORK.
 - ↳ CAR BACKS DOWN ON WAY TO WORK.
 - ↳ ~~BACK~~ GOT "JUMP" MADE IT BACK HOME.
 - ↳ MATT LOOKING REAL BAD - NO COLOR VERY COOL.
 - ↳ GOT IN TRUCK w/ BOSS.
 - ↳ ~~THE~~ RICK IS FOREMAN.
 - ↳ LATE FOR WORK.
 - ↳ I KNOW MATT NEEDS HOSP. CARE QUICK.
 - ↳ WENT BACK TO WORK w/ BROTHER.
 - ↳ ON WAY BACK TO LEBANON GOT PULLED FROM SHARON.
 - ↳
 - xx ↳ DESCRIBE BATH & WATER COOL.
 - ↳ ~~SEE~~ MATT PUTTING PANTS 2X LAST NIGHT.
 - ↳ SHARON DO LAUNDRY - HAD SHARON LAUNDRY MATT UNDERWEAR.
 - ↳ EVERY TIME MATT GOT DESCRIBE BATH - COOL WATER WAS MIXED w/ HOT WATER.
 - ↳
 - ↳ HAD ONE WALK TOILET AT HOME.
 - ↳ SHARON & MATT HOME.
 - ↳ 1ST BATH AROUND 3 OR 4 O'CLOCK.
 - ↳

IN THE SUPREME COURT OF OHIO

RICHARD J. KLEIN,
APPELLANT,

v.

STATE OF OHIO;
HARRY K. RUSSEL (Warden),
Lebanon Correctional Institution:
Appellees.

00-2105

On Appeal from the
Warren County Court of
Appeals, Twelfth Appellate
District

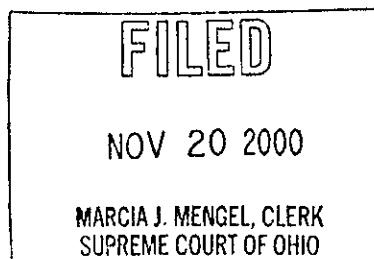
Court of Appeals
Case No. 2000-08-069

NOTICE OF APPEAL OF APPELLANT RICHARD J. KLEIN

Richard J. Klein (350-022)
L.C.I. P.O. Box 56
Lebanon, Ohio 45036

APPELLANT/PRO SE

Betty D. Montgomery (0007102)
Ohio Attorney General,
Dian Mallory (0014867)
Assistant Attorney General
Corrections Litigation Section
140 East Town Street - 14th Floor
Columbus, Ohio 43215



COUNSEL FOR APPELLEES,
HARRY K. RUSSEL (WARDEN)
LEBANON CORRECTIONAL INSTITUTION

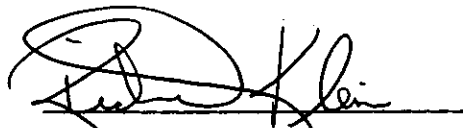
P. EXHIBIT L

NOTICE OF APPEAL OF APPELLANT RICHARD J. KLEIN

Appellant Richard J. Klein (350022), hereby gives notice of appeal to the Supreme Court of Ohio from the judgment, on an original action of Habeas Corpus, from the Warren County Court of Appeals, Twelfth Appellate District of Ohio, entered in the Court of Appeals Case No. 2000-08-069, on October 6, 2000.

This case is an appeal of right. (i) This case is originated in the court of appeals, original action Habeas Corpus; (ii) the case raises a substantial constitutional question; (iv) the case involves a felony; (v) the case is one of public or great general interest.

Respectfully submitted,

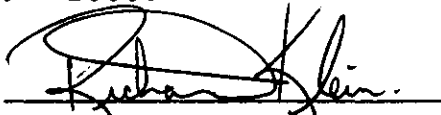


RICHARD J. KLEIN (350-022)
L.E.C.I. P.O. Box 56
Lebanon, Ohio 45036

APPELLANT/PRO SE

PROOF OF SERVICE

I certify that a true and accurate copy of the foregoing document has been served by Certified U.S. mail to counsel for appellees, Harry K. Russel, Betty D. Montgomery, Dian Mallory, Corrections Litigation Section, 140 East Town Street - 14th Floor, Columbus, Ohio 43215 on November 5, 2000.



Richard J. Klein
APPELLANT/PRO SE

The Supreme Court of Ohio

30 EAST BROAD STREET, COLUMBUS, OHIO 43215-3414

THOMAS J. MOYER, CHIEF JUSTICE
ANDREW DOUGLAS
ALICE ROBIE RESNICK
FRANCIS E. SWEENEY
PAUL E. PFEIFER
DEBORAH L. COOK
EVELYN LUNDBERG STRATTON

MARCIA J. MENGEL
CLERK

(614) 466-3331
(614) 466-5201

December 28, 2000

Richard J. Klein #350-022
Lebanon Correctional Institution
P. O. Box 56
Lebanon, OH 45036

Re: State of Ohio ex rel. Richard J. Klein v. Harry K. Russell, Warden
Case No. 00-2105

Dear Mr. Klein:

In response to your recent letter, please be advised that your appellant's merit brief in the above-referenced case must be received in our office by January 16, 2001. [If you are concerned that you will be unable to meet the deadline, please see the provisions for filing for an extension of time as set out in Rule XIV, Section 3(B), of the Rules of Practice of the Supreme Court of Ohio.]

Because you have filed an affidavit of indigency, you are required to send us only as many copies of the merit brief as you can afford.

Please feel free to contact our office if you have further questions.

Sincerely,



JoElla
Deputy Clerk

P. EXHIBIT M

IN THE SUPREME COURT OF OHIO

STATE ex rel. Richard Klein
Appellant,

V.

Harry Russell,
Appellee.

Case No. 00-2105

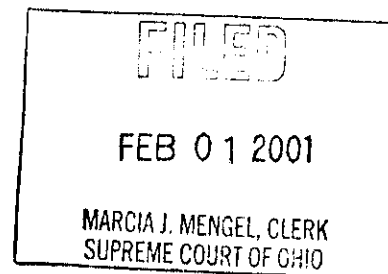
Appellant's Motion To Overrule
Appellee's Motion to Strike Brief

Richard J. Klein SSD 022
LEC.I. P.O. Box 56
Lebanon, Ohio 45036

APPELLANT, Pro Se

Betty D. Montgomery (0007102)
Ohio Attorney General
Dian Mallory (0014867)
Assistant Attorney General
Corrections Litigation Section
140 East Town St. 14th Floor
Columbus, Ohio 43215

COUNSEL FOR APPELLEE



MEMORANDUM

113

On January 28, 2001, (Friday) Appellant was served with a Motion to Strike Appellant's brief for failure to provide service of the Merit Brief.

Appellant was unaware that Appellee's Counsel did not receive service of the brief. On January 2, 2001, Appellant was placed in Local Control (isolation) pending an investigation. All personal property was removed from Appellant's possession including the Merit Brief. The brief had been misplaced and the institution was unable to recover the brief until Saturday January 13, 2001. Appellant was unable to obtain any copies because that Monday January 15, 2001, was a holiday and Tuesday January 16, 2001, was the deadline. Arrangements were made to have Appellant's father, Richard Klein Sr. pick up the Merit Brief from the institution on Tuesday January 16, 2001, and file it at the Clerk's office that day. With the Merit Brief was a letter to the Clerk explaining the situation and requesting that a copy, "please be made."

①

and for that copy to be forwarded to the Appellee's Counsel, or to have appellant's Counsel (Father, Richard Klein Sr.) take the copy and personally deliver it to Appellee's Counsel. Richard Klein Sr (Father) was present at the Clerk's office and available to present this copy to appellee's counsel if the Clerk would not forward the copy.

Until January 28, 2001, Appellant fully believed that either the Clerk or his father made service of the brief. The letter to the clerk explaining Appellant's extraordinary circumstances should have been sufficient to cause service of the merit Brief on Appellee's Counsel.

Appellant, at this time, is not in a position where he is able to make timely filings, obtain copies, nor, draft appropriate documents, for filing, or serve this documents on appellee's Counsel due to these extraordinary circumstances (Local Control, isolation)

Appellant hereby respectfully requests that copies and service of Merit brief, and any future filings, be made in his behalf.

because Appellant is proceeding pro se, without counsel, is indigent and incarcerated, is in Social Control (isolation), is without appropriate materials for drafting legal documents, because this is an (appeal of right and needs to be reviewed on its merits and not dismissed on (inadvertant procedural miscalculations) In the interests of justice, appellant respectfully requests an order overruling Appellee's Motion to Strike Merit Brief and to have Appellant's documents and filings copied and served in his behalf because his present circumstances do not allow him to do so personally. Appellant further requests Pursuant to S. Ct. Rule XIV 2(D)(2) that new deadlines be imposed for Appellees since a copy was not forwarded to that office as requested by Appellant.

Respectfully submitted

Richard J. Klein 350822
LECT P.O. Box 56
Lebanon, Ohio 45036

Appellant, Pro, Se.

Proof of Service

I hereby certify that a true copy of the foregoing document has been served on all Parties in this action by certified mail and through the clerk of Court on this 27, day of January 2001.

Richard G. Klein 350022
LECI. P.O. BOX 56
Lebanon, Ohio 45036

Appellant, Pro se.

In The Supreme Court of Ohio

State ex rel. Richard J. Klein
Appellant,

v.

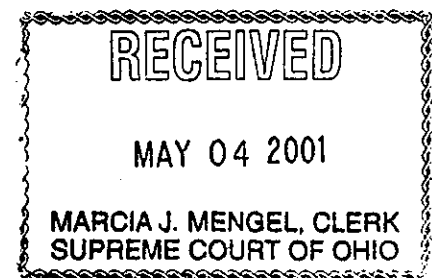
Case No. 00-2105

Harry K. Russell (Warden)
Appellee.

Appellant's Motion for delayed Reconsideration

Richard J. Klein (350022)
S.O.C.F. P.O. Box 45649
Lucasville Ohio 45649

Appellant/pro se



Betty D. Montgomery (0007102)
Ohio Attorney General
Diane Mallory (0014867)
Assistant Attorney General
140 East Town St.
Columbus, Ohio 43215

Counsel for Appellee

In The Supreme Court of Ohio

State ex rel. Richard J. Klein
Appellant,

V.

Case No. 00-2105

Harry K. Russell (Warden)
Appellee.

Appellant's Motion For Delayed Reconsideration

Richard J. Klein, Appellant hereby respectfully requests leave for delayed reconsideration, pursuant to Supreme Court Rule XI, Section 2(A)(2). The cause for the delay is that the evidence in support of reconsideration was unavailable at the time of the sua sponte dismissal of this and has just recently become available. The facts and evidence are fully set forth in memorandum.

Appellant respectfully requests this motion for reconsideration be permitted and the appeal at right reinstated.

Respectfully Submitted
Richard J. Klein
Richard J. Klein (350022)
S.O.C.F. P.O. Box 45699
Lucasville, Ohio 45649

Memorandum

Appellant invoked the jurisdiction of the Supreme Court on a direct appeal of right from an original action originating in the Court of appeals. Appellant proceeded pro se in forma pauperis status. The deadline for filing the Merit Brief was January 16, 2001. Due to objective factors beyond Appellant's control it was impossible to make the filing by mail, so Appellant's father obtained the brief from Lebanon Correctional Inst. officials and personally filed it with the Clerk on January 16, 2001. The Merit Brief was timely filed. Then, due to Appellant's forma pauperis status, Appellant's father requested that a copy be made for personal service on Appellee's Counsel, but Appellant's father was told by the clerk that personal service was not necessary, and that, the Clerk's office would make and forward a copy for service on the Appellee. (see exhibit attached). The Clerk failed to forward the copy for service on Appellee's Counsel. Appellee moved to strike Appellant's brief on grounds that service was not made, and on March 21, 2001, the appeal was sua sponte dismissed.

The appeal should not have been dismissed because the brief was timely filed and service on Appellee's Counsel should have been made by the Clerk's office, since, the Clerk instructed Appellant's father that it was not necessary for him (father) to personally serve the brief, that, the Clerk's office would forward the copy for service. Appellant's father would have timely served the brief on Appellee's Counsel on January 16, 2001, and Appellant had a right to the copy at forma pauperis status.

Due to incarceration this affidavit was not obtainable at an earlier date so reconsideration motion could not have been filed at an earlier date. These are objective factors outside of Appellant's control and the appeal is an appeal of right.

For the foregoing reasons Appellant respectfully requests reconsideration of the judgment of dismissal and requests that the appeal of right be reinstated.

Respectfully Submitted,
Richard J. Klein 350022
S.O.C.F. PO Box 45699
Lucasville, Ohio 45699

AFFIDAVIT

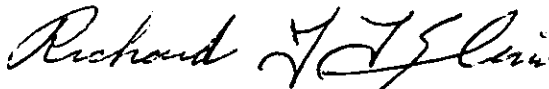
State of Ohio

Hamilton County

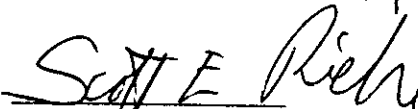
I, Richard Joseph Klein, SSN: 269-38-8073, being duly cautioned and sworn, deposes
And states the following:

1. I, Richard Joseph Klein, Sr, am the father of Richard Joseph Klein, Jr., SSN: 295-60-7484, #350-022, who is the appellant in Supreme Court Case No. 00-2105.
2. I personally hand delivered to the Clerk of the Ohio Supreme Court, the original Of the Merit Brief in Case No. 00-2105 for filing on its due date January 16, 2001.
3. On that date, the Clerk said a copy would be forwarded to the appellee's counsel, The Assistant Ohio Attorney General Diane Mallory.
4. At that time, I was instructed by the Clerk of the Ohio Supreme Court, that because this case was proceeded upon in Forma Paprous Status and an affidavit of indigency had been placed of record, that I was not required to deliver this Merit Brief to appellee's counsel and they (the Clerk's Office) would forward the copy for service upon appellee's counsel. I was available and ready to personally hand serve this document, at that time, but was precluded from doing so due to the Clerk's instruction. Who also failed to serve the Document.

Further affidavit sayth naught.



Richard J. Klein

Sworn and Subscribed in my presence this 3 day of April 2001.

Notary Public

SCOTTE. RIEHLE
Notary Public, State of Ohio
My Commission Expires April 23, 2004

IN THE SUPREME COURT OF OHIO

STATE EX REL. RICHARD KLEIN, :

Appellant, :

v. :

Case No. 00-2105

HARRY RUSSELL, :

Appellee. :

APPELLEE'S MOTION FOR EXTENSION OF TIME

RICHARD KLEIN, #350-022
Lebanon Correctional Institution
P.O. Box 56
Lebanon, Ohio 45036

Appellant, *Pro Se*

BETTY D. MONTGOMERY (0007102)
Ohio Attorney General
DIANE MALLORY (0014867)
Assistant Attorney General
Corrections Litigation Section
140 East Town Street – 14th Floor
Columbus, Ohio 43215
(614) 644-7233

Counsel for Appellee

IN THE SUPREME COURT OF OHIO

STATE EX REL. RICHARD KLEIN,

Appellant,

v.

Case No. 00-2105

HARRY RUSSELL,

Appellee.

APPELLEE'S MOTION FOR EXTENSION OF TIME TO FILE MERIT BRIEF

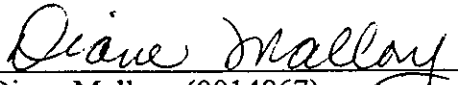
Appellant filed his Merit Brief on January 16, 2001. Therefore, Appellee's Merit Brief is due on February 15, 2001. However, Appellant did not serve his Merit Brief on opposing counsel in sufficient time for Appellee to file and submit a Brief.

The Certificate of Service on Appellant's Brief indicates that he mailed it to all interested parties on January 16, 2001. The postmark on the envelope which contained the Brief which was served on Appellee's counsel is dated February 5, 2001. (See Exhibit A attached) Appellant did not mail his Brief until three weeks after he claimed to have mailed it. As a result, Appellee's counsel received it one week before Appellee's Brief is due. This does not give Appellee time to adequately research and respond to the Propositions of Law contained in Appellant's Brief.

Appellee has filed a motion to strike Appellant's Brief, which is pending at this time. If the Court overrules the motion to strike, Appellee would ask the Court to give Appellee 30 days after that date in which to file his Brief.

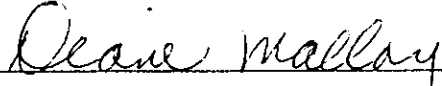
Respectfully submitted,

Betty D. Montgomery (0007102)
Ohio Attorney General


Diane Mallory (0014867)
Assistant Attorney General
Corrections Litigation Section
140 East Town Street - 14th Floor
Columbus, Ohio 43215
(614) 644-7233

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed by regular, first-class mail to Richard Klein, #350-022, Lebanon Correctional Institution, P.O. Box 56, Lebanon, Ohio 45036, on this 8th day of February, 2001.


C

125
Richard J. K... 350028
LECT PO Box 56
Columbus, Ohio 43056

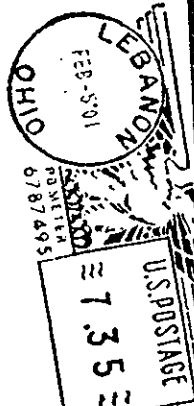
10
C...
M... B...

PLACE STICKER AT TOP OF ENVELOPE
TO THE RIGHT OF RETURN ADDRESS.
FOLD AT DOTTED LINE
CERTIFIED MAIL



7000 0520 0015 5139 2253

OHIO ATTORNEY GENERAL
CORRECTIONS LITIGATION SECTION
140 East Town Street - 14th Floor
Columbus, Ohio 43215



The Supreme Court of Ohio

FILED

FEB 09 2001

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIOState of Ohio ex rel.
Richard J. Klein,
Appellant,

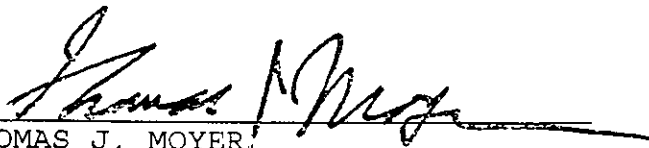
Case No. 00-2105

v.

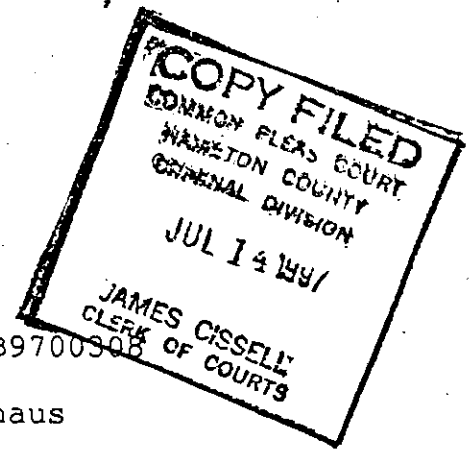
ENTRY

Harry K. Russell, Warden,
Appellee.

On February 8, 2001, appellee filed a request for an extension of time of 30 days to file his merit brief. Pursuant to S. Ct. Prac. R. XIV, Sec. 3(B)(2)(b), the Court may grant one extension of time to file a brief of no more than 10 days. Therefore, the time for appellee to file his merit brief is hereby extended to February 26, 2001.


THOMAS J. MOYER,
Chief Justice

COURT OF COMMON PLEAS
CRIMINAL DIVISION
HAMILTON COUNTY, OHIO



STATE OF OHIO,

Plaintiff

-v-

RICHARD J. KLEIN,

Defendant

: Case No. B9700308
: Judge Niehaus
: STATE'S RESPONSE TO
: DEFENDANT'S MOTION FOR
: NEW TRIAL

Now comes the State of Ohio, by and through its Assistant Prosecuting Attorneys, and moves this Court for an order overruling Defendant's Motion for New Trial.

Notwithstanding Defendant's allegations, the State did not violate the requirements of Brady v Maryland (1963), 373 U.S. 83, by failing to disclose evidence favorable to Defendant. First, Defendant contends that the State made a promise to Sharon Richmond that it would take no position concerning the length of her sentence if she testified as a State's witness, and that at trial Richmond denied that any such promises had been made to her in exchange for her testimony. This contention is an absolute misstatement of the trial testimony. On direct examination Richmond testified as follows:

Q. And you came before Judge Niehaus and entered that guilty plea?

A. Yes, I did.

P. Exhibit Q

Q. And I believe you were told at that time that Judge Niehaus at some point in time would make a sentence on you and that we were going to let him determine the appropriate sentence; is that correct? [Emphasis added.]

A. Yes, you did.

As such, it is inconceivable how Defendant can contend in his brief that he was unaware of any consideration Richmond was receiving in this regard until after the trial was completed. The State's position on Richmond's sentence was brought out during her direct testimony, the Defendant had every opportunity to, and did, attack her credibility on this issue, and the jury was never misled about what consideration Richmond may have received. Since this information was revealed during trial and was subject to full scrutiny, Defendant cannot contend that the outcome of the trial would have been different even if he had learned of it earlier. State v Barzacchini (1994), 96 Ohio App. 3d 440; State v Joseph (1995), 73 Ohio St. 3d 450; State v Brown (1996), 112 Ohio App. 3d 583.

Defendant next contends that the State violated Brady by failing to disclose that the delay in seeking medical treatment for Matthew Richmond was not a contributing factor in Matthew's death. As conceded in his brief, Defendant raised this very issue in his pretrial motion to dismiss and the Court ruled that no exculpatory evidence had been withheld and denied Defendant's motion. This should be even

more evident now, given the trial testimony of Dr. Glenn Warden that the delay in treating Matthew Richmond greatly diminished the likelihood that he would be able to survive his burn injuries. At various points in his testimony Dr. Warden testified as follows:

Q. Did this significant delay in treatment in any way complicate Matthew Richmond's treatment there at Shriner's?

A. Yes, it did. [Tr. p. 21]

Q. Did this delay in treatment for Matthew Richmond make his chance of surviving these burns less likely?

A. Yes, they did. [Tr. p. 22]

Q. Doctor, do you have an opinion to a reasonable degree of medical certainty as to the cause of Matthew Richmond's death?

A. Yes. We were present at the autopsy. We totally agree that he died of pulmonary lung damage secondary to a 74 percent total body surface area burns.

Q. Burns on his body contribute to that death?

A. Yes, they did.

Q. Did the delay in medical treatment also contribute to that death.

A. Yes, they did. [Tr. p. 27-28.][Emphasis added]

The State has no knowledge of any medical reports or any statement of any physician who has indicated that the delay in seeking medical treatment for Matthew Richmond did not contribute to his death. In fact, in his very first interview

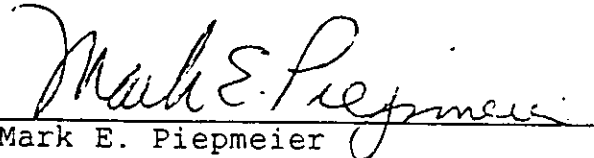
with investigators, the undisputed expert in this field, Dr. Glenn Warden, stated that the deterioration of Matthew's lungs was directly tied to the delay in medical treatment for his severe burns. While the State is aware of its responsibility to divulge exculpatory information to Defendant, it cannot provide what does not exist.

Finally, Defendant contends that he is entitled to a new trial because the Court improperly instructed the jury on the issue of "complicity." While Defendant is correct in asserting that the State never wavered from its position that Defendant was the individual responsible for holding Matthew Richmond in the tub of scalding water, both Defendant and Sharon Richmond were guilty of Child Endangering for failing to seek medical treatment for Matthew in the hours after the scalding occurred. In fact, Sharon Richmond and Defendant were both charged with this offense in count 6 of the indictment and, as she candidly admitted to the jury, Sharon Richmond had already been convicted for her role in this crime at the time of her testimony. As such, Defendant and Sharon Richmond were complicitors in this offense, and the complicity instruction was properly given. Further, the instruction likely worked more to Defendant's benefit than to his detriment, because it included the admonition to the jury set out in ORC 2923.03(D) to view Sharon Richmond's testimony with "grave suspicion" and to weigh it with "great caution."

Given the attempts by Defendant to attack her credibility at trial, such an admonition from the Court could not have had any prejudicial effect on his defense. In fact, where an accomplice testifies against an accused this instruction is mandated and failure to give it constitutes error. State v Ferguson (1986), 30 Ohio App. 3d 171; State v O'Dell (1989), 45 Ohio St. 3d 140.

WHEREFORE, the State submits that Defendant's Motion for New Trial is not well-taken and requests that said motion be overruled.

Respectfully submitted,



Mark E. Piepmeier
Assistant Prosecuting Attorney
230 E. Ninth St., Suite 700
Cincinnati, Ohio 45202
(513) 946-3078



Richard G. Gibson #0022613
Assistant Prosecuting Attorney
230 E. Ninth St., Suite 700
Cincinnati, Ohio 45202
(513) 946-3126

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on H. Louis Sirkin and Anita P. Berding, Attorneys for Defendant, at 105 W. Fourth Street, Cincinnati, Ohio